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SUBJECT: NCP HANGS TOUGH ON REFERENDUM "DEAL"

Classified By: DCM Mark L. Asquino, for reasons 1.4 (b) and (d)

¶1. (C) Summary: On October 1 Government of South Sudan (GoSS) Vice President Dr. Riek Machar publicly announced, prematurely, that he had reached a "referendum deal" with his counterpart, Government of National Unity (GNU) Second Vice President Ali Osman Taha. The "deal" included the important "concession" that voters would determine whether the South secedes by a margin of 50 percent plus one, in lieu of the NCP's previously-demanded higher margins. While generally responding positively, the GoSS Council of Ministers had some reservations about the law and sent Machar back to Khartoum to "fine-tune" the draft. The National Congress Party (NCP) did not respond favorably to the attempted "renegotiation", and moreover, signaled that the referendum law must be agreed to in tandem with resolution of the on-going census/elections dispute as a "total package." End Summary.

¶2. (U) On October 16, GoSS Vice President Dr. Riek Machar announced to a waiting press corps in Juba that he had struck a deal on the referendum law with his counterpart, Government of National Unity (GNU) Second Vice President Ali Osman Taha. The draft law stipulated that 50 percent plus one would be required to validate a vote for either unity or separation; require a voter-turnout of 66 percent of registered voters to legitimize the exercise; set voter eligibility criteria; and establish a referendum commission with very broad powers to organize, conduct and oversee the exercise. Finally, the draft called on the NCP and Sudan People's Liberation Movement (SPLM) to enter into discussion on post-2011 arrangements.

Council of Ministers Says Generally Good, but Raises Concerns

¶3. (SBU) The GoSS Council of Ministers (Council) considered the draft referendum law during its standing weekly session, October 16. Several sources confirmed that while Council's reception was generally positive, it had raised substantive and procedural concerns. Substantively, interlocutors cited concerns over: the law's requirement that two-thirds of registered voters turn-out to validate the exercise; the "too loosely defined" powers of and appointment process for the referendum commission; the ability to "manipulate" voter eligibility, especially in the North; and the enjoinder that the SPLM and NCP enter into post-2011 discussions, which interlocutors believe should not be "linked" to the referendum law.

¶4. (C) Of these concerns, the two-thirds quorum caused the most "heartburn" within the SPLM. Minister of Presidential Affairs Luka Biong told the CG that Blue Nile Governor and

senior SPLM member Malik Aggar was particularly "alarmed." However, Biong said, that he managed to "talk him through it," Biong noted that he had argued that the South should have no problem meeting the threshold: registered voters had, by definition, signaled their intent to participate in the process. Biong also stressed to Aggar that the law called for a re-run of the referendum within 60 days if the voter-turnout threshold was not reached.

15. (C) Concerning process, several SPLM members, as well as representatives from other parties, complained that Machar had not sufficiently consulted with them and had exceeded his mandate by accepting a preliminary deal. Biong stated, though, that from his perspective, Machar had "done his best" to be consultative, adding that "if anyone else had brought the draft referendum law back, there would have been jubilation in Juba." However, as we know, "Machar has problems within the SPLM, the same as Taha does within the NCP."

Renegotiation Fails, NCP Says No Deal Without Elections Resolution

16. (C) The GoSS Council of Ministers formed a five-person committee to review the bill. The committee consists of: Minister of Legal Affairs Michael Makuei (Chair); Minister of Southern People's Liberation Army (SPLA) Affairs, Nhial Deng; Minister of Information Paul Mayom from the SPLM; Minister of Youth and Culture Gabriel Changson; Minister of Parliamentary Affairs Dr. Martin Elia from the United Democratic Salvation Front Mainstream (UDSF-M) and South Sudan democratic Forum (SSDF) respectively. This committee was formed to redress

KHARTOUM 00001232 002 OF 002

the "process" issue by being more inclusive. It was tasked with formulating a negotiating position on the substantive concerns noted.

17. (C) Committee chair, Michael Makuei, told the CG that the Committee decided to focus its efforts on lowering the voter turn-out quorum to between 40-55 percent. However, upon his return to Juba from Khartoum October 21, Makuei told the CG that the NCP refused to budge, stating that it had already conceded enough by lowering the pass/fail rate to 50 percent plus one. Makuei confided that in his "personal view" the SPLM could live with the two-thirds quorum as-is; however, "others may feel differently."

18. (C) Separately, Machar confided to CDA Whitehead that he was concerned that the NCP would pull the referendum agreement off the table if Machar were not able to convince the SPLM to agree to a deal that also provided a pathway for elections to be held in April 2010. In a non-paper, the NCP has proposed a constitutional amendment that would "protect" Southern interests by lowering the blocking minority on issues related to the South from its current 30 percent to 20 percent. However, thus far, the SPLM has rejected that proposal, and has gave it scant consideration at the October 16 Council of Ministers meeting.

19. (C) Comment: Government of Sudan Presidential Adviser Dr. Ghazi Sallaheddin confirmed to CDA Whitehead that Machar's fears were well-grounded. The National Congress Party (NCP) thought that it had a "package deal" when Machar returned to Juba. Instead, the NCP faced a parliamentary boycott and an attempt to renegotiate the terms of the referendum law. Sallaheddin said that the referendum and census/election must be a linked package: "It is not going to fly anywhere on one wing."

WHITEHEAD